

## Message Text

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AMCONSUL LAHORE

C O N F I D E N T I A L ISLAMABAD 9253

E.O. 11652: GDS

TAGS: PK, PINT, SHUM

SUBJECT: GOP PROPOSES NEW CONSTITUTIONAL AMENDMENTS

SUMMARY: ON SEPTEMBER 1, FEDERAL LAW MINISTER MALIK AKHTAR PROPOSED TO THE NATIONAL ASSEMBLY THE FIFTH CONSTITUTIONAL AMENDMENT BILL WHICH WOULD AMEND FIFTEEN ARTICLES OF THE PAKISTAN CONSTITUTION. CHANGES WOULD AFFECT APPOINTMENT OF PROVINCIAL GOVERNORS, POSTPONE SEPARATION OF EXECUTIVE AND JUDICIAL BRANCHES, AND STRENGTHEN FEDERAL CONTROL OVER PROVINCIAL HIGH COURTS AND THE SUPREME COURT. SEVERAL MEASURES WOULD LIMIT OR MAKE IMPOSSIBLE SUCCESSFUL APPEALS OF DEFENSE OF PAKISTAN RULES (DPR) CONVICTIONS. THE NEW BILL IS A FURTHER STEP IN ASSERTION OF EXECUTIVE AUTHORITY AND PLACES FURTHER CONSTRAINTS ON AN ALREADY CIRCUMSCRIBED JUDICIARY. END SUMMARY.

1. LAW MINISTER AKHTAR PROPOSED AMENDMENTS TO FIFTEEN ARTICLES OF PAKISTAN CONSTITUTION IN NATIONAL ASSEMBLY ON SEPTEMBER FIRST. ALTHOUGH FORMAL DEBATE WILL NOT BEGIN UNTIL SEPTEMBER 3, THE OPPOSITION HAS PUT GOVERNMENT ON NOTICE IT PLANS TO CONTEST THE BILL. MOST  
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NOTABLE AMENDMENTS WOULD ACHIEVE THE FOLLOWING: A) A

PROVINCIAL GOVERNOR MUST BE A PERMANENT RESIDENT OF A PROVINCE DIFFERENT FROM THE ONE IN WHICH HE IS APPOINTED (GOVERNOR (TO TAKE EFFECT AFTER NEXT GENERAL ELECTIONS). B) THE CONSTITUTIONAL TIME LIMIT FOR SEPARATING THE JUDICIARY FROM THE EXECUTIVE (THREE YEARS CURRENTLY) WILL BE EXTENDED TO SIX YEARS. C) A FIVE YEAR, ONE-TIME LIMIT WILL BE IMPOSED ON SERVICE AS HIGH COURT CHIEF JUSTICE OR SUPREME COURT CHIEF JUSTICE. D) EXCEPT FOR THE CHIEF JUSTICE, ANY HIGH COURT JUDGE CAN BE TRANSFERRED TO ANOTHER PROVINCE'S HIGH COURT. E) THE SUPREME COURT'S JURISDICTION WILL BE LIMITED (TO CASES INVOLVING THE CONSTITUTION OR A SPECIFIC LAW) RATHER THAN OPEN-ENDED. F) BALUCHISTAN WILL HAVE ITS OWN HIGH COURT (THERE IS NOW A COMBINED SIND-BALUCHISTAN HIGH COURT). G) THE SUPREME COURT CANNOT PROTECT CIVIL RIGHTS BY COURT ORDER UNTILL ALL OTHER LEGAL REMEDIES HAVE BEEN EXHAUSTED, NOR CAN ANY COURT GRANT BAIL OR SET ASIDE ARRESTS UNDER DPR. H) THE SUPREME COURT WILL BE EMPOWERED TO HEAR GRIEVANCE CASES OF CIVIL SERVANTS STEMMING FROM SEPARATION OF BANGLADESH FROM PAKISTAN (THERE IS NOW A SERVICES TRIBUNAL TO HEAR SUCH CASES). I) AS LONG AS THERE IS A PROCLAIMED EMERGENCY, NO COURT CAN HEAR A CHALLENGE TO DPR ON THE GROUNDS THEY VIOLATE THE FUNDAMENTAL RIGHTS THE CONSTITUTION GUARANTEES. J) THE FEDERAL GOVERNMENT RESERVES THE RIGHT TO IMPOSE A SALES TAX.

2. LIKE PRECEEDING CONSTITUTIONAL AMENDMENTS, THE MOST RECENT BILL IS A HODGE-PODGE OF MEASURES, SOME INNOCUOUS, SOME DESIGNED TO REMEDY LEGITIMATE GRIEVANCES AND OTHERS PLACING FURTHER CONSTRAINTS ON THE JUDICIARY. THE PROVISION ON RESIDENCY FOR PROVINCIAL GOVERNORS SEEMS AN ATTEMPT BY THE GOVERNMENT TO ENSURE THAT A REPETITION OF THE KHAR ERA IN THE PUNJAB, WHEN KHAR AS GOVERNOR USED HIS POLITICAL BASE TO CHALLENGE THE CHIEF MINISTER, WILL NOT TAKE PLACE. THE ESTABLISHMENT OF A SEPERATE HIGH COURT FOR BALUCHISTAN IS LONG OVERDUE, AND THE SALES TAX PROVISION WILL GIVE THE FEDERAL GOVERNMENT ANOTHER IMPORTANT INCOME SOURCE. ENABLING THE SUPREME COURT TO HEAR CIVIL SERVANT GRIEVANCE CASES ARISING OUT OF

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THE SEPARATION OF BANGLADESH WILL ENABLE MANY CIVIL SERVANTS TO APPEAL OFTEN INEQUITABLE FINDINGS OF THE SERVICES TRIBUNAL. (IT WILL ALSO TEND TO TIE UP THE SUPREME COURT DOCKET WITH NUMEROUS CIVIL SERVICE CASES.)

3. THE SECTIONS OF THE BILL MOST DISQUIETING TO THE OPPOSITION ARE THOSE WHICH FURTHER RESTRICT THE AUTHORITY OF THE COURTS. THE GOP, WHICH SOMETIMES USES INDIA AS

AN EXAMPLE TO JUSTIFY ACTIONS IT TAKES, IS PROCEEDING ALMOST IN PARALLEL WITH THE GOI IN RESTRICTING THE ACTIVITIES AND SCOPE OF THE JUDICIAL BRANCH. THE JUDICIARY IS AFFECTED IN TWO WAYS BY THE AMENDMENT. FIRST, ITS AUTHORITY IS FURTHER CIRCUMSCRIBED THROUGH LIMITING ITS JURISDICTION AND PRECLUDING, AS LONG AS THE EMERGENCY IS IN EFFECT, ITS HEARING A CHALLENGE TO DPR ON THE GROUNDS THEY ARE INCONSISTENT WITH FUNDAMENTAL RIGHTS. SECOND, IT IS MADE MORE VULNERABLE TO POLITICAL PRESSURE THROUGH THE PROVISIONS ALLOWING THE TRANSFER OF HIGH COURT JUDGES, LIMITING THE TERMS FOR CHIEF JUSTICES, AND EXTENDING FOR ANOTHER THREE YEARS THE PERIOD IN WHICH JUDICIARY AND EXECUTIVE REMAIN UNSEPARATED.

4. THE HIGH AND SUPREME COURTS IN PAKISTAN STILL SOMETIMES ACT INDEPENDENTLY OF THE EXECUTIVE AND DECIDE CASES IN A MANNER UNFAVORABLE TO THE GOVERNMENT. THESE MOST RECENT STEPS WILL FURTHER RESTRICT AN ALREADY BELEAGUERED JUDICIARY.  
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